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Right to Farm Act

Summary

An Act to define certain farm uses, operations, practices, and products; to provide certain disclosures; to provide for circumstances under which a farm shall not be found to be a public or private nuisance; to provide for certain powers and duties for certain state agencies and departments; and to provide for certain remedies for certain persons.

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Section 1. {Title} This act shall be known as the Right to Farm Act

Section 2. {Definition}

A. "Farm" means the land, plants, animals, buildings, structures, ponds used for agricultural purposes, machinery, equipment, and other items or mechanisms used in the commercial production of farm products.

B. "Farm Operation" means the operation and management of a farm or a condition or activity that occurs at any time in connection with the commercial production, harvesting, and storage of farm products, and includes, but is not limited to:

1. Marketing products at roadside stands or farm markets.
2. The generation of noise, odors, dust, fumes, and occasional conditions.
3. The operation of equipment and machinery necessary for a farm, including but not limited to irrigation and drainage systems and pumps and on-farm grain dryers, and the movement of vehicles, machinery, equipment, and farm products and associated inputs necessary for farm operations on the roadway as authorized by applicable motor vehicle laws.
4. Field preparation and ground and aerial seeding and spraying.
5. The application of chemical fertilizers or organic materials, conditioners, liming materials, or pesticides.
6. Use of alternative pest management techniques.
7. The fencing, feeding, watering, sheltering, transportation, treatment, use, handling, and care of farm animals.
8. The management, storage, transport, application and utilization of farm by-products, including manure or agricultural wastes.
9. The conversion from a farm operation activity to other farm operation activities.
10. The employment and use of labor.

C. "Farm Product" means those plants and animals useful to human beings produced by agriculture and includes but is not limited to, forages and sod crops, grains and feed crops, dairy and dairy products, field crops, poultry and poultry products, cervidae livestock, including breeding and grazing equine, fish and other aquacultural products, bees and bee products, berries, herbs, fruit and vegetables, flowers, seeds, grasses, nursery stock, trees and tree products, mushrooms and other similar products, and any other product which incorporates the use of food, feed, fiber, or fur as determined by the {Insert Appropriate State Agency}.

D. "Generally Accepted Agricultural and Management Practices" means those practices defined by the {Insert Appropriate State Agency}. The department shall give due consideration to the written recommendations of the state university agriculture and natural resources extension and the agriculture experiment station in cooperation with the United States Department of Agriculture and industry and professional associations.

E. "Person" means an individual, corporation, partnership, association or other legal entity.

Section 3. {Nuisance Language}

A. A farm or farm operation shall not be found to be a public or private nuisance if the farm or farm operation alleged to be a nuisance conforms to generally accepted agriculture and management practices according to policy determined by the

{Insert Appropriate State Agency}. Generally accepted agriculture and management practices shall be reviewed annually by the {Insert Appropriate State Agency} and revised as considered necessary.

B. A farm or farm operation shall not be found to be a public or private nuisance if the farm or farm operation existed before a change in the land use or occupancy of land within one mile of the boundaries of the farm or farm operation land, and if before that change in land use or occupancy of land, the farm or farm operation would not have been considered a nuisance.

C. A farm or farm operation is in accordance with subsection one of section two and shall not be found to be a public or private nuisance as a result of any of the following:

1. A change in ownership or size.
2. Temporary cessation or interruption of farming.
3. Enrollment in government programs.
4. Adoption of new technology.
5. A change in the type of farm product being produced.

Section 4. {Enforcement}

A. The {Insert Appropriate State Agency} shall investigate all operations involving a farm nuisance complaint, including but not limited to complaints involving the use of manure and other nutrients, agricultural waste products, dust, noise, odor, fumes, air pollution, surface and ground water pollution, food and agricultural processing by-products, care of farm animals and pest infestation.

B. The {Insert Appropriate State Agency} shall enter into a memorandum of understanding with other appropriate state agencies. The investigation and resolution of complaints shall be conducted in accordance with the memorandum of understanding. The {Insert Appropriate State Agency} shall develop procedures for the investigation and resolution for other farm-related complaints.

C. If the {Insert Appropriate State Agency} finds that the person responsible for a farm or farm operation is using generally accepted agricultural and management practices, the {Insert Appropriate State Agency} shall notify that person complainant of this finding in writing. If the {Insert Appropriate State Agency} identifies the source or potential source of the problem to be caused by the use of other than generally accepted agriculture and management practices, the {Insert Appropriate State Agency} shall advise the person responsible for the farm or farm operation that necessary changes should be made should be made to resolve or abate the problem and to conform with generally accepted agriculture or management practices. {Insert Appropriate State Agency} shall determine if those changes are implemented and shall notify the person responsible for the farm or farm operation and the complainant of this determination in writing.

D. A complainant who brings more than three unverified complaints against the same farm or farm operation within three years may be ordered, by the {Insert Appropriate State Agency}, to pay to the {Insert Appropriate State Agency}, the full cost of any fourth or subsequent in verified complaint against the same farm or farm operation. In this section, "unverified complaint" shall mean a complaint in which the {Insert Appropriate State Agency} determines that the farm or farm operation is using generally accepted agricultural and management practices.

E. In any nuisance action brought in which a farm or farm operation is alleged to be a nuisance, if the defendant farm or farm operation prevails, the farm or farm operation may recover from the plaintiff the actual amount of costs and expenses determined by the court to have been reasonable incurred by the farm or farm operation in connection with the defense of the action, together with reasonable and actual attorneys fees.

F. The seller of real property may make available to the buyer the following statement: "This notice is to inform the prospective buyer that the real property they are about to acquire lies within one mile of the property of a farm or farm operation. Generally accepted agricultural and management practices may be utilized by the farm or farm operation and may generate usual and ordinary dust, odors and other associated conditions, and these practices are protected by the Right to Farm Act."

Section 5. {Severability Clause}

Section 6. {Repealer Clause}

Section 7. {Effective Date}

[ALEC's Sourcebook of American State Legislation 1996](#)